

MICHIGAN SUPREME COURT

PUBLIC HEARING  
JANUARY 27, 2016

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**ITEM NO. 1 (2004-08; MCR 8.126, MCR 9.108, and SBR 15)**

**CHIEF JUSTICE YOUNG:** Welcome, it's not often we have a crowd this large for administrative proceedings, but welcome to the January and first of our administrative proceedings. We have just one item noticed today for consideration at public hearing, and it is a proposed amendment of our pro hac vice rule, which is the rule that is- permits lawyers not licensed in state to temporarily practice in the Court. And we have one endorsed speaker, Mr. Gershel.

**MR. GERSHEL:** Good morning, Your Honors. May it please the Court. Alan Gershel, grievance administrator on behalf of the Grievance Commission, and I'd like to spend a few moments making some comments in support of the rule changes. By way of brief background, after this Court appointed me to this position back in October of 2014-

**CHIEF JUSTICE YOUNG:** Are you still happy about that?

**MR. GERSHEL:** I am, Your Honor.

[LAUGHTER]

**MR. GERSHEL:** Was it a trick question?

[LAUGHTER]

**CHIEF JUSTICE YOUNG:** Yes, it was.

**MR. GERSHEL:** I am, thank you. I had undertaken to look at the various functions of the office and learn that we were very much involved in the pro hac vice process. It struck me at the time that it was not consistent with our core mission, which is the protection of the public. I also learned that we were devoting a fair amount of resources to this process. We would receive approximately 700 applications a year - it's been pretty consistent since about 2008 - we would field questions from the attorneys, we would contact the lawyers, and on the average, a member on my staff was spending close to two hours a day

processing these applications. I contend that the current rule will streamline and improve the process. Promptness is important because, as this Court well knows, these applications come in at a point in time typically when a matter is pending before a court. Currently, the current rule, a Michigan sponsor must send the various application materials to the Attorney Grievance Commission, we are then required to notify the court concerning whether or not the applicant has practiced in Michigan and, if so, how many times in the past year. The State Bar currently has the function of collecting and accounting for the fees. It's essentially a bifurcated and ineffective system that we currently have. The proposed rule that we have submitted is the result of cooperation and collaboration between the Attorney Grievance Commission and the State Bar. We've had a series of terrific meetings to work on this proposal and we contend that transferring the process from the AGC to the State Bar will certainly improve the process. The rule, as proposed, will now require the applicant and the sponsoring attorney to submit materials, instead of to the Grievance Commission, to the State Bar. The State Bar would take over the processing of that. Also a product of the proposed rule change will be to improve and streamline the process in the sense that there will be electronic filing requirements as it concerns the filing of the motion certificate, of the fees, the confirmation of payment, notification to the court that the attorney has been granted permission to appear at a Michigan Court in the past year-

**JUSTICE VIVIANO:** Is the State Bar ready to go live with the electronic system?

**MR. GERSHEL:** Excuse me, Your Honor?

**JUSTICE VIVIANO:** Is the State Bar ready to go live with the electronic system?

**MR. GERSHEL:** Perhaps that question is better [INAUDIBLE @ 4:41] for them- For the State Bar. But I believe as to this process, they certainly are. I should add that currently-

**CHIEF JUSTICE YOUNG:** Excuse me- Anne, do you know the answer to that question?

**MS. BOOMER:** So yes. I talked to the State Bar [INAUDIBLE WORDS 4:52 - 4:54] the way that the rule normally would be effective May 1<sup>st</sup>, if it's adopted. They said the May 1<sup>st</sup> date would be perfect for them. They're not ready to go live today, but they would be-

**JUSTICE VIVIANO:** So they're not going to start in a paper process and then transition. We're going to wait until they're ready with their new electronic system?

**CHIEF JUSTICE YOUNG:** The rule remains- The current rule remains in effect until May 1<sup>st</sup>. [PAUSE] Okay.

I guess as a follow-up, and so I'll address it to Anne, Mr. Gershel said the Attorney Grievance Commission provides- Answers phone calls as sort of almost like a help desk function- Customer service function. Would the State Bar be taking over that function as well?

**MS. BOOMER:** It would.

**MR. GERSHEL:** You Honor, to add to the question also, while the system will be an improvement- That we receive currently, almost half of the applications in paper form. So this now requirement that it will be electronically filed will be a huge improvement to the efficiency of the project.

**CHIEF JUSTICE YOUNG:** A couple of things. One, until you mentioned it- When we first embarked on this, this is something I kind of brought the Court because we have no process for it, and I attended the conference where I heard how other states have handled the pro hac vice issue. We had no idea how many were occurring in the state, the fact that there were so many hundred is kind of an interesting fact. I also find it interesting that when we made the change from having the AGC make notification, as opposed to the court making the notification, the number of notifications went down - which probably not because there were fewer applications, just the courts were not very effective in transmitting the notice.

**MR. GERSHEL:** I think that's probably correct. Because I- I have indicated the number of application have been pretty consistent and even predates the changeover in the rule which was, I think, in 2011. Certainly if there is an issue with respect to the conduct of the temporarily admitted attorney, the process provides that if we receive a request for investigation, we will then take back that case and we will look at the- And we'll investigate that as we would any other allegation of misconduct.

**CHIEF JUSTICE YOUNG:** To your knowledge, have there ever been occasion for discipline of lawyers admitted pro hac vice?

**MR. GERSHEL:** When I looked at that issue, in 2015 we only received two requests, so- And as far as- None of those matters have ever panned out. So it's really a de minimis number, but certainly if it happens, we'll do what we're supposed to do.

**CHIEF JUSTICE YOUNG:** Anything else, sir?

**MR. GERSHEL:** I just wanted to say that- Thank The Court, I think that this rule will certainly be a huge improvement. Thank you for your time.

**CHIEF JUSTICE YOUNG:** Thank you for your time, thank you for your comments. There being no other comments, the public hearing is adjourned.